

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CHERYL OLA NEALE,)	
)	
Plaintiff)	
)	
v.)	Civil No. 96-0053-B
)	
EASTERN MAINE MEDICAL CENTER,)	
)	
Defendant)	

RECOMMENDED DECISION

Pending before the Court is Defendant's Motion for Summary Judgment, filed on August 13, 1996.¹ Plaintiff's Response was due on September 9, pursuant to the Court's Order of August 22, 1996. Plaintiff failed to respond to the Motion. In this District, a party's failure to timely respond to a motion is generally construed to waive objection to the motion. D. Me. R. 19(c). However, the Federal Rules of Civil Procedure require us to examine the merits of a motion for summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991).

Statement of Facts²

Plaintiff is a licensed practical nurse, who was actively employed at Defendant Eastern Maine Medical Center for approximately 13 years up to February 28, 1988. On that day, Plaintiff began

¹ This Motion incorporates the arguments presented in Defendant's Motion to Dismiss or for Summary Judgment, filed April 15, 1996. Pursuant to the Court's Order of August 22, the Motions are consolidated.

² The Statement of Facts is derived from that presented by Defendant in conjunction with its Motion. We view the facts in the light most favorable to Plaintiff. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

a leave of absence, allegedly necessitated by various work-related injuries occurring between 1975 and 1987. She did not return to active work thereafter.

From 1987 until the present, Plaintiff and Defendant have been involved in extensive state workers' compensation proceedings relative to Plaintiff's injuries and employment. Plaintiff asserts that Defendant's participation in the Workers' Compensation Board's decisions regarding the conduct of these proceedings was, in itself, discriminatory.

Between February 10, 1989, and March 21, 1990, Plaintiff filed several complaints with the Maine Human Rights Commission, none of which she pursued in court. On January 3, 1994, Plaintiff was awarded Social Security Disability Benefits, retroactive to June 29, 1990. She continued to receive those benefits at least through July, 1996.

On July 7, 1992, Defendant instituted a change in policy which provided that employees who were absent from work in excess of 24 months for any reason would be terminated. The policy had previously exempted persons, like the Plaintiff, absent due to a compensable workers' compensation disability. Plaintiff was notified of the policy change by letter in late July, 1992, which letter informed her that she would be terminated if she did not return to work by August 1, 1994. Between July, 1992, and June, 1993, Plaintiff made several requests for transfers to other jobs with Defendant, all of which were denied. Plaintiff made no further attempt to return to work. On or about August 11, 1994, Plaintiff was notified that she was terminated from her position with Defendant.

Discussion

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of

law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)).

Defendant first argues that Plaintiff's claims, which arise under the Americans with Disabilities Act ["ADA"] and the Age Discrimination in Employment Act ["ADEA"], are barred for her failure to timely file them with the Equal Employment Opportunities Commission ["EEOC"]. Both of these laws require claims to be filed within particular time limits as a prerequisite to a civil suit in this Court. 29 U.S.C. § 626(d); 42 U.S.C. § 2000-5(e),(f), incorporated into the ADA by 42 U.S.C. § 12117(a). At best, because Maine is a 'deferral' state within the meaning of 29 U.S.C. § 633(b), Plaintiff was required to file her claims with the appropriate state agency within 300 days of the alleged violation. 29 U.S.C. § 626(d). Plaintiff filed her EEOC charge on February 9, 1995. Accordingly, claims arising before April 15, 1994 are time-barred.

Plaintiff's specific allegations in this action include the following violations which are alleged to have occurred after April 14, 1994:

- (1) intentionally failing to discuss employment options at Plaintiff's workers' compensation hearing in July, 1994;
- (2) aiding in restricting her testimony at her workers' compensation hearings; and
- (3) terminating her employment effective August 11, 1994 pursuant to a July, 1992 policy change of which Plaintiff was notified.

The first two of these allegations clearly seek what amounts to appellate review of rulings of the Maine Workers' Compensation Commission. This Court does not sit in judgment of state

proceedings. Plaintiff's claims regarding procedural rulings of that tribunal are not cognizable in this action.

The third claim is time-barred by virtue of Defendant notifying Plaintiff in July, 1992 that her employment would be terminated in 1994 pursuant to a change in employment policy. It is not the actual termination that begins the running of the limitations period, but rather the *notification* of adverse action. *Chardon v. Fernandez*, 454 U.S. 6 (1981).

Inasmuch as there are no claims remaining that fall within the 300-day limitation period, Defendant is entitled to judgment as a matter of law on Plaintiff's Complaint. I therefore recommend Defendant's Motion for Summary Judgment be GRANTED in its entirety.³

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on November 18, 1996.

³ Defendant raises additional grounds in its Motion, which need not be addressed in light of our conclusion on the first issue.